

# **Exhibit 51**

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
PENNSYLVANIA

CIVIL DIVISION

\* \* \* \* \* No. 2016-010508

IN RE:

RECOUNT AND/OR RECANVASS  
OF THE VOTE FOR PRESIDENT  
OF THE UNITED STATES AND  
FOR UNITED STATES SENATE  
IN THE NOVEMBER 8, 2016  
GENERAL ELECTION

\* \* \* \* \*

Media, PA, December 7, 2016

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Courtroom 12

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TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JUDGE CHAD F. KENNEY, SR.

LAWRENCE M. OTTO, ESQUIRE  
DOUGLAS E. LIEB, ESQUIRE  
For the Plaintiff

FRANCIS J. CATANIA, ESQUIRE  
For the Defendant

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DIRECT CROSS REDIRECT RECROSS THE COURT

ON BEHALF OF THE PLAINTIFF:

[None]

ON BEHALF OF THE DEFENDANT:

[None]

EXHIBITS

MARKED ADMITTED

ON BEHALF OF THE PLAINTIFF:

[None]

ON BEHALF OF THE DEFENDANT:

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P R O C E E D I N G S

December 7, 2016

THE CLERK: -- the Commonwealth of Pennsylvania in the Common Pleas Courts of Delaware County, I now declare this Court is in session. The Honorable President Judge Chad F. Kenney is presiding. Good morning, Your Honor.

THE COURT: Good morning.

ALL: Good morning, Your Honor.

THE CLERK: You may be seated.

THE COURT: All right. This is Stein vs. Delco Board of Electors, 10580-16 [sic]. Counsel for the record?

MR. OTTER: Lawrence M. Otter for Ms. Stein.

MR. CATANIA: Your Honor, Francis Catania, ID #41733, counsel for the Bureau and Board of Elections.

THE COURT: All right.

MR. OTTER: Your Honor, as a preliminary matter, I have a Pro Hac Vice Motion for my colleague from New York. May I present that to the Court? I --

THE COURT: All right. And Counsel, you know the rules for filing pro hac vice. Correct?

MR. OTTER: Yes, it's all --

THE COURT: And they've all been followed?

MR. OTTER: Well --

1 THE COURT: Including payment of fees?

2 MR. OTTER: Yes. Payment of fees has been  
3 done.

4 THE COURT: All right. Hand it up. All  
5 right. And did you have a chance to look at this, Mr.  
6 Catania?

7 MR. CATANIA: Your Honor, I've received this  
8 this morning. I took a cursory look at the Pennsylvania  
9 Rule of Civil Procedure 10.12-1. It appears that Mr.  
10 Otter has averred what the rule requires, but I have not  
11 given it any in depth review. I was just curious as to  
12 whether any other member of Mr. Lieb's law firm is  
13 licensed in Pennsylvania because they're quoted in many  
14 national papers making public comments about the  
15 Pennsylvania election system. Just I wanted to know if  
16 anyone else there is licensed in Pennsylvania because  
17 when I checked, I couldn't find any evidence of it.

18 THE COURT: And what significance does that  
19 have to --

20 MR. CATANIA: I'm just curious as to how they  
21 can opine about Pennsylvania Law without being licensed  
22 here. It goes to --

23 THE COURT: Well, everybody opines anymore.  
24 We're in a nation of opiners, so but in terms of this  
25 particular issues, the Pro Hac Vice Motion seems to be

1 in order, so I will allow his admission for this  
2 particular hearing.

3 MR. OTTER: Thank you, Your Honor.

4 THE COURT: Um-hum. All right. And then you  
5 want to proceed, Mr. Catania? I guess we're agreeing to  
6 the facts on this --

7 MR. CATANIA: Your Honor, as --

8 THE COURT: -- in terms of the --

9 MR. CATANIA: That's a --

10 THE COURT: -- filing of the petition and the  
11 Election Board --

12 MR. CATANIA: Your Honor, as --

13 THE COURT: -- deciding it did not have  
14 jurisdiction?

15 MR. CATANIA: As a preliminary matter, Ms.  
16 Hagan received a Notice of Attend and a Notice to  
17 Produce today. She is here. She was asked to bring  
18 with her the unofficial returns of the 2016 General  
19 Election for President of the United States and the  
20 United States Senate.

21 THE COURT: Well, we're not there yet. We're  
22 not there yet.

23 MR. CATANIA: Oh, I'm just telling you --

24 THE COURT: I know that, but what -- is she --  
25 she's here.

1 MR. CATANIA: Right.

2 THE COURT: And whatever she brought she  
3 brought and we'll discuss that when we get to it. Right  
4 now, we're discussing the Board's decision to not accept  
5 the petitions.

6 MR. CATANIA: Your Honor, the Election Board  
7 did not make any decision on the matter that brings us  
8 here today. What happened was there were some things  
9 filed with Ms. Nethane's [ph] office, which included a  
10 petition by Sharon Pennock, one of the Petitioners today  
11 that was returned to her because as Ms. Hagan will  
12 testify, she believes that there was nothing that she  
13 was able to do since she received the application on the  
14 28th of November and the election had been certified on  
15 the 23rd of November. We believe the application itself  
16 or the petition itself, Your Honor, on the 28th was  
17 filed by an attorney and not any of the three  
18 Petitioners.

19 THE COURT: All right. So what's your  
20 position, Mr. Catania?

21 MR. CATANIA: If we want to mark this, we're  
22 happy to hand it in. This is what was returned to the  
23 Petitioners after it was dropped off at the Bureau of  
24 Elections on Monday, November 28. It was sent back to  
25 them with the cover letter which indicated that --

1 MR. OTTER: We'll stipulate to that, Your  
2 Honor.

3 THE COURT: All right. So we can admit that.

4 THE CLERK: What do you want this marked as?

5 MR. CATANIA: Board of Elections 1.

6 THE COURT: That's fine.

7 MR. CATANIA: And the only other document that  
8 I offered to stipulate to was our official certification  
9 of the election which is a 30 page document. I have  
10 shown to Mr. Lieb and Mr. Otter. It's evidence of the  
11 action taken by the three board members at the Board of  
12 Elections meeting on November 23. We would offer that  
13 as Board of Elections 2.

14 THE COURT: Okay.

15 MR. OTTER: No objection.

16 MR. CATANIA: And our position, Your Honor, is  
17 that any relief requested under Section 3154 was unable  
18 to be offered by the Bureau of Elections when they  
19 received that petition on Monday, November 28, because  
20 their jurisdiction no longer existed after they  
21 certified on the 23rd of November.

22 THE COURT: All right. Go ahead, Mr. Otter.

23 MR. OTTER: Your Honor, I defer to my  
24 colleague for [inaudible].

25 THE COURT: For the record?



1 MR. LIEB: Yes, Your Honor. Douglas Lieb,  
2 Emery, Celli, Brinckerhoff & Abady for the Appellants,  
3 Jill Stein and Sharon Pennock. Under the Supreme Court  
4 of Pennsylvania's Decision in In Re: Contest of the 2003  
5 General Election for the Office Prothonotary --

6 THE COURT: Will you keep your voice up,  
7 please?

8 MR. LIEB: Yes, Your Honor. Under that  
9 Pennsylvania Supreme Court Decision, the procedural  
10 validity of the Board's Certification of the election  
11 results is a prerequisite to the denial of a petition as  
12 untimely. So if the Board properly certified the  
13 election results on the day that they were certified, we  
14 would acknowledge that the petitions were untimely. The  
15 question that we wish to explore through the testimony  
16 of Ms. Hagan and through other evidence adduced to this  
17 hearing is whether, in fact, all of the necessary  
18 procedural requirements for that certification were  
19 complied with, making it a valid certification of the  
20 results and thus resolving the question of whether the  
21 petitions were or were not timely.

22 THE COURT: Um-hum. All right. So do you  
23 have any basis to challenge the procedures that were  
24 taken? Do you have any witnesses? Do you have any  
25 evidence? Do you have anything to indicate that the

1 procedures taken to come to the certification were  
2 improper?

3 MR. LIEB: Well, so the reason we served a  
4 Notice to Appeal on Ms. Hagan was so that she could  
5 provide the testimony, Your Honor. It has been our  
6 understanding that for instance in Allegheny County, the  
7 Board of Elections does not sign the computation of the  
8 results prior to certification and then wait five days  
9 as required by the Election Code before certifying.  
10 Now, obviously, that is not of itself evidence that the  
11 Delaware County Board of Elections would not do the same  
12 thing. But, you know, we had served a Notice to Produce  
13 for the signed computation of the returns. It's our  
14 understanding that there is no such document. And in  
15 our view, the Election Code is clear that the way this  
16 is supposed to work is there's the computation. The  
17 computation gets completed, it gets signed by the  
18 members of the Board of Elections, then there's a five  
19 day waiting period, and then and only then can  
20 certification occur. So in the absence of a signed  
21 computation and on the basis of the evidence that some  
22 other Boards of Elections at least have a practice of  
23 not completing that signed computation, we think it's  
24 proper to explore whether there was a signed computation  
25 of the results and whether there was a five -- whether

1       there was a wait of five days between that signed  
2       computation and the certification as required by Section  
3       1404(f) of the Election Code.

4               THE COURT:   So you're saying, okay, Judge,  
5       it's untimely, but the only reason it's untimely is  
6       because the foundation is certification and you're  
7       saying it's an improper certification?

8               MR. LIEB:   Yes, in essence.   I think what  
9       we're saying is that it is -- it would -- a petition is,  
10      in fact, timely, if there is not a proper certification.

11              THE COURT:   All right.   Not a proper  
12      certification, Mr. Catania.

13              MR. CATANIA:   Your Honor, procedurally, their  
14      ability to challenge the certification evaporated on the  
15      second day after the certification happened.   The  
16      Election Code in 3157 sets forth that any decision of  
17      the Election Board has to be appealed from that second  
18      day.   That wasn't done here.   They didn't do that.  
19      They're trying to bootstrap this into something it  
20      isn't.   There's a Supreme Court case that I cited, In  
21      Re: Recount of Single Certain Voting Machines in a 1984  
22      case where the Supreme Court reconciles the two  
23      conflicting deadlines that are set forth in Section 3154  
24      which allows a Petition for Recount up to the time that  
25      the computation and the certification is complete and

1 then allows people five days after the certification and  
2 computation is complete to appeal to Court.

3 THE COURT: He's not arguing -- he's -- yeah,  
4 but what he's saying is the certification is improper.

5 MR. CATANIA: It is the ability --

6 THE COURT: And you're saying he has two days  
7 to appeal --

8 MR. CATANIA: Challenge that.

9 THE COURT: -- the procedural aspect of it?

10 MR. CATANIA: First, yes, if he didn't appeal  
11 from it. And I don't agree with his underlying argument  
12 because he's saying that you have to wait five days  
13 after the Election Board acts. And the Supreme Court in  
14 Pennsylvania hasn't said that. They've said that the  
15 five day period merely gives people an opportunity to  
16 file a Petition for Recount with the Court after the  
17 Election Board acts --

18 THE COURT: All right.

19 MR. CATANIA: -- and that didn't happen here.

20 THE COURT: And what case are you relying on,  
21 Mr. Lieb? What was that 2003 case?

22 MR. LIEB: Yes, Your Honor. It's In Re:  
23 Contest of 2003 General Election for the Office of  
24 Prothonotary. It's 849 A.2d 230, decided in 2004. And  
25 what that case holds is that among other things, and I

1 have a copy if Your Honor would like, that if a Petition  
2 for Recount is filed and it's deemed untimely, but the  
3 basis on which it's deemed untimely is a procedurally  
4 improper certification that should never have happened,  
5 the petition is, in fact, timely if the certification is  
6 improper.

7 THE COURT: Um-hum. All right. So that -- so  
8 you're challenging the certification. And what's your  
9 response to that in terms of his wanting to call  
10 witnesses and produce --

11 MR. CATANIA: It's an issue that should have  
12 been brought up before the Board of Elections so that  
13 they could have considered it. There were members of  
14 the Stein campaign at the Board of Elections meeting.  
15 That issue was not address to the Board at all.  
16 Secondly, they should have filed an appeal on that  
17 issue, the second day after election with the Court, the  
18 Prothonotary's Office and the Office of Judicial  
19 Support. They didn't do that. They could have had the  
20 option of filing a Petition for a Re-canvass with the  
21 Court that Monday. They didn't do that either. They're  
22 trying to bootstrap their failure to comply with  
23 Pennsylvania Law into an argument that is not supported  
24 by Pennsylvania Law.

25 THE COURT: Um-hum, all right. Comment, Mr.

1 Lieb?

2 MR. LIEB: Your Honor --

3 THE COURT: Do you have anything else?

4 MR. LIEB: No. I would simply refer Your  
5 Honor to that same Decision that I cited and I would  
6 reiterate that we were entirely within our rights to  
7 file a petition and if the grounds on which the petition  
8 was denied was that it was untimely because of  
9 certification, the question of the validity of the  
10 certification is necessarily implicated in that  
11 proceeding. And that's what this case makes very clear.

12 THE COURT: All right. And your petition  
13 challenges the certification?

14 MR. LIEB: No, Your Honor.

15 THE COURT: No, your appeal, does it challenge  
16 the certification?

17 MR. LIEB: No, Your Honor. The appeal asserts  
18 that the petitions were timely.

19 THE COURT: Uh-huh, all right.

20 MR. CATANIA: Your Honor, the timeliness is  
21 the timing in which they had to file with the Bureau of  
22 Elections. He's confusing the issue. It was filed in  
23 the wrong place. It was filed by a Pennsylvania  
24 attorney in the wrong place.

25 THE COURT: Yeah. He said -- and I guess

1       that's another issue, right? Even if we were to assume  
2       that the certification was improper, you're saying the  
3       petition itself was faulty?

4               MR. CATANIA: Yes, Your Honor. It wasn't file  
5       in the right place. Once the Election Board acts, their  
6       ability to undo the certification is non-existent.  
7       There's no law I'm aware of that allows them to revisit  
8       the action that they've already taken, once they've  
9       certified the election. The only remedy clearly  
10      prescribed in the statute is to appeal to Court and then  
11      the Court would have to Order that. Whether it's a  
12      recount or an appeal from the Decision of the Board of  
13      Elections.

14             THE COURT: Well, and they're saying they did  
15      that, they appealed.

16             MR. CATANIA: They did not. They attempted to  
17      file a Petition for Recount with the Bureau, even though  
18      they had already certified. There's no support in the  
19      law to allow that. And we're here today because they've  
20      appealed from that Decision, alleging that the Board  
21      acted. The Board didn't act. It simply said, we don't  
22      have a legal ability to do what you're asking us to do,  
23      we've already certified it.

24             MR. LIEB: A couple of points, Your Honor.  
25      First of all, with respect to the propriety of filing

1 the petitions with the Board of Elections rather than  
2 the Court of Common Pleas. I would refer Your Honor  
3 again to a Decision of the Supreme Court of  
4 Pennsylvania. This one is In Re: Reading School Board  
5 Election. It's 634 A.2d 170, decided in 1993. And  
6 that case makes quite clear there, there was a  
7 Petitioner who had filed a petition in the Board of  
8 Elections five days after the completion of the  
9 computation of returns and the Supreme Court held that  
10 it was proper for him to do so. So our -- the  
11 Petitioner in this case and all of the Petitioner's who  
12 went to the Board of Elections or the office on November  
13 28, had the ability to file those petitions with the  
14 Board of Elections, if it was within five days of the  
15 completion of the initial count. And that's the  
16 underlying question that we're attempting to adduce  
17 evidence of here is when was that initial count  
18 completed? Were all of the requirements followed such  
19 that it counted as a completion --

20 THE COURT: Well, we have a certification.  
21 Isn't the key date that certification?

22 MR. LIEB: With respect, Your Honor, I don't  
23 know that it is. I think the statute prescribed in  
24 1404(e) of the election --

25 THE COURT: I thought that's what you came in



1 here and said. You came in and said but for the  
2 certification that it's untimely, we would agree, but  
3 the certification. We're challenging the certification.

4 MR. LIEB: Right. So, I mean, it's all part  
5 of one procedure. So there's a five day waiting period  
6 after which certification may occur and no --

7 THE COURT: But you're saying there's not a  
8 certification yet.

9 MR. LIEB: We're saying that we have not seen  
10 proof that there is a valid certification at this time,  
11 correct.

12 THE COURT: Um-hum, all right. And you're  
13 entitled to proof of the certification. What gives you  
14 entitle to proof? There is a certification. What --  
15 you don't have a certain period of time where you have  
16 to challenge that the actual procedure is taken during  
17 the certification?

18 MR. LIEB: Well, Your Honor, in this  
19 proceeding, I think we're certainly permitted to adduce  
20 evidence that bears on the question before the Court  
21 which is the timeliness of the Recount Petitions that  
22 were filed before the Board of Elections on November 28.

23 THE COURT: And what -- under what rule or  
24 what -- where are you entitled to proceed that way?  
25 Because I'm not here, you know, you're not here on a

1 fishing expedition. You're not here -- I'm not here  
2 sitting as some legislative body sitting here reviewing  
3 the processes that were taken towards a certification.  
4 That's not the function here. And I'm not seeing  
5 anything or you're not coming forth with anything, it  
6 seems to me, that would take us down that road to  
7 challenge the certification. But again, challenging the  
8 certification itself, if that's what you're now saying  
9 that you need to do, would require that you file  
10 something within a certain period of time.

11 MR. LIEB: Your Honor, we served a Notice to  
12 Produce for the signed computation of the election  
13 returns. That document was not produced and I believe  
14 Mr. Catania represented that the reason it was not  
15 produced is that it does not exist. If that is so,  
16 under Section 404(f) of the Election Code which is 25  
17 Purdon's 3154(f), then the computation of the returns  
18 has not been properly completed. That means that the  
19 petition would still be timely even if someone filed --  
20 walked in and filed it now which -- and it also follows  
21 that the certification was not valid because you can't  
22 certify until you've waited five days after computation.

23 MR. CATANIA: Your Honor, may I hand up a copy  
24 of the Notice to Attend and Notice to Produce and ask  
25 that it be marked? Because it does not say what Mr.

1       Lieb is arguing that it says. It asks for the  
2       unofficial returns. The unofficial returns are the  
3       machine only returns that are posted to the county  
4       website on election night. It does include absentees.  
5       It does not include provisional ballots. It does not  
6       include all the overseas voters.

7               MR. LIEB: May --

8               MR. CATANIA: What they've asked for doesn't  
9       exist.

10              MR. LIEB: May I respond, Your Honor?

11              THE COURT: Yeah, can I see that? Go ahead.

12              MR. LIEB: So I'm quoting now from Section  
13       1404(f) of the Pennsylvania Election Code. "As the  
14       returns from each election district are read, computed"  
15       --

16              THE COURT: And 1404(f) is what? 25 --

17              MR. LIEB: It's 25 Purdon's 3154(f). "As the  
18       returns from each Election District are read, computed,  
19       and found to be correct or corrected as aforesaid, they  
20       shall be recorded on the blanks prepared for the purpose  
21       until all the returns from the various election  
22       districts which are entitled to be counted, shall have  
23       been duly recorded, when they shall be added together,  
24       announced, and attested by the clerks who made and  
25       computed the entries respectively, and signed by the

1 members of the county board. Returns under this  
2 subsection shall be considered unofficial for five days.  
3 The county board shall submit the unofficial returns to  
4 the secretary of the Commonwealth by 5:00 p.m. on the  
5 Tuesday following the election" and it goes on. I did  
6 not, respectfully, invent the concept of unofficial  
7 returns. It's right there in the Election Code. And it  
8 makes clear that what that is is a signed computation of  
9 all of the district-by-district returns signed by the  
10 members of the Board of Elections.

11 THE COURT: All right. Anything else, Mr.  
12 Catania?

13 MR. CATANIA: No, Your Honor.

14 THE COURT: All right. Anything else,  
15 Counsel?

16 MR. LIEB: We'd like to call a witness with  
17 your permission, Your Honor.

18 THE COURT: All right. And what's your offer  
19 of proof?

20 MR. LIEB: Our offer of proof is --

21 THE COURT: You're calling a witness for what  
22 purpose, for discovery deposition? What's your offer of  
23 proof?

24 MR. LIEB: Sure. We're calling the witness to  
25 testify as to whether -- when unofficial returns were

1       computed, whether they were signed, and how many days  
2       passed between the completion of said unofficial  
3       returns, and the certification not previously introduced  
4       into evidence.

5               THE COURT: All right. Mr. Catania?

6               MR. CATANIA: Your Honor, she's not the only  
7       person that's involved in that process. The computation  
8       occurs at the voting machine warehouse in the City of  
9       Chester. It's a bipartisan effort. It's presided over  
10      by Mr. Kerns. He wasn't subpoenaed or asked to be here  
11      today. Ms. Hagan's job is to assemble all of the  
12      returns, the provisional ballots done by Ms. Headley's  
13      group, the machine returns done by Mr. Kern's group, and  
14      then the absentees done by Ms. Hagan's group and present  
15      them to the Board of Elections. And that they, they as  
16      the body with the legal power, can complete the  
17      computation by taking the legal action to certify the  
18      results.

19              THE COURT: Well, were the unofficial returns  
20      sent or were they not sent?

21              MR. CATANIA: Well they were sent at different  
22      times, Your Honor.

23              THE COURT: And you're saying they were sent?

24              MR. CATANIA: Well they are all sent to Ms.  
25      Hagan's office.

1 THE COURT: Um-hum. And then Ms. Hagan's  
2 office sends them out, right?

3 MR. CATANIA: Assembles them, then the board  
4 takes action, they have a meeting, advertised public  
5 meeting and they vote to accept them and it's at least  
6 theoretically possible that they could make last minute  
7 adjustments based upon presentations by people who  
8 they've asked for recounts.

9 THE COURT: All right. So let's assume for  
10 the purposes of argument, that unofficial returns  
11 weren't sent according to this statute, right?

12 MR. CATANIA: For argument's --

13 THE COURT: For argument's sake.

14 MR. CATANIA: Sure, sure.

15 THE COURT: All right. Where does that leave  
16 us?

17 MR. CATANIA: I don't think it changes  
18 anything, frankly. If they're complaining about an  
19 action of the Board of Elections, they had two days  
20 after the action to appeal from them. They did not do  
21 that.

22 THE COURT: And that's pursuant to what  
23 section?

24 MR. CATANIA: 3150 -- 25 PF 3157, Your Honor.

25 THE COURT: Um-hum, all right. So it's even

1 assuming the unofficial returns were not sent, you had  
2 two days to challenge the certification and that wasn't  
3 done.

4 MR. LIEB: But respectfully, Your Honor, under  
5 Section 1404(e) of the Election Code which is 25  
6 Purdon's 3154(e), the ultimate question that brings us  
7 here is whether the petitions filed by Ms. Pennock and  
8 other Pennsylvania voters were timely. And under 25  
9 Purdon's 3154(e), a petition for --

10 THE COURT: So this is a second argument  
11 you're making. Because when you first came in you said,  
12 Judge, we're challenging the date of the certification  
13 because yeah, I would agree that if the certification  
14 date were correct, right, we're untimely, but we're  
15 challenging the certification itself. So now you're  
16 arguing something different. Correct?

17 MR. LIEB: I think I probably changed my  
18 emphasis a bit, but I think the overall point is that if  
19 the unofficial returns were not compiled properly in  
20 accordance with the statute, then it would follow both  
21 that the certification was invalid and that our  
22 petitions are --

23 THE COURT: Well then let's proceed now with  
24 the assumption that the certification was proper and it  
25 was certified what date was it?

1 MR. CATANIA: The 23rd of November, Your  
2 Honor.

3 THE COURT: The 23rd of November, all right?  
4 So let's take it from there. What's your argument?

5 MR. LIEB: So, Your Honor, if the  
6 certification was proper and it happened five days after  
7 the completion of the computation of the returns --

8 THE COURT: No, no, no, no. Oh, so you're  
9 using completion of the returns. No, we're -- we --  
10 this jumping off point under this is the certification  
11 and you will have certain time to do something after the  
12 certification. Correct?

13 MR. LIEB: Your Honor, if I could just turn  
14 your attention to Section 1404(e) which is the --

15 THE COURT: All right. Which is what again?

16 MR. LIEB: 25 Purdon's 3154(e) which is the  
17 provision under which these petitions were filed.

18 THE COURT: All right, go ahead.

19 MR. LIEB: What that provision says is that  
20 voters can petition for a recanvass --

21 THE COURT: Where are you in the section?  
22 Where are you reading from?

23 MR. LIEB: Well I was just paraphrasing, but I  
24 was about to --

25 THE COURT: You can't paraphrase a statutory



1 section.

2 MR. LIEB: Okay. So I'll just --

3 THE COURT: There's no paraphrasing of a  
4 statutory section. So point me exactly what you're  
5 reading and then talk about it.

6 MR. LIEB: Okay. I am about 15 words in  
7 beginning upon petition of three voters of any district,  
8 3154(e).

9 THE COURT: Okay, go ahead.

10 MR. LIEB: Upon petition of three voters of  
11 any district, verified by affidavit, that an error,  
12 although not apparent on the face of the returns has  
13 been committed therein or on its own motion, not  
14 relevant, the county board shall at any time prior to  
15 the completion of the computation of all returns, summon  
16 the election officers of the district and shall conduct  
17 a recount or recanvass of the ballots -- of all ballots  
18 cast. So that was the statutory provision invoked by  
19 the citizens who went in to the Elections Bureau on  
20 Monday, November 28. There is -- so the initial  
21 question with respect to timeliness is whether the  
22 compilation -- sorry, the computation of all the returns  
23 of the county was completed. And reading that along  
24 with 3154(f) just below which we read a short while ago,  
25 what it means for the -- all the returns for the county

1 to be compiled is that --

2 THE COURT: Well, let me ask you this. It  
3 starts out and it says whenever it shall appear that  
4 there is a discrepancy in the returns of any election  
5 district, all right? So it has a premise that you  
6 didn't read the first part of it. Your premise is  
7 whenever it appears that there is a discrepancy in the  
8 returns. So tell me where there appears to be a  
9 discrepancy in the returns of any election district.

10 MR. LIEB: The next word, however, Your Honor  
11 is or, or upon petition of three voters of any district  
12 verified by affidavit then in error, although not  
13 apparent on the face of the return.

14 THE COURT: Yeah, okay, right.

15 MR. LIEB: So it's --

16 THE COURT: So what is the error?

17 MR. LIEB: So the error is that the voting  
18 machines that were used are fundamentally not secure,  
19 are susceptible to both intentional in inadvertent error  
20 and interference, and that there is a good faith basis  
21 to believe based upon the views of leading computer  
22 scientists and experts in the field that these machine  
23 are not secure and that the result is inherently not  
24 trustworthy absent further inquiry to make sure that the  
25 machines were functioning as intended.

1                   THE COURT: All right. So in other words,  
2                   you're not saying there was an error so to speak, you're  
3                   saying that potentially, there's a problem with the  
4                   system or the voting machines?

5                   MR. LIEB: Well, I guess what I'm saying is  
6                   that the people who walked in to the Elections Bureau on  
7                   November 28 or the people who signed documents that were  
8                   walked in, swore in affidavits that they had a good  
9                   faith belief that there was an error committed on the  
10                  face of the returns and that belief was based at least  
11                  in part, on the fact that the machine results --

12                  THE COURT: Well, I mean, you're reading a  
13                  statute. The statute says an affidavit as to an error.  
14                  What are the errors that these -- what are the errors  
15                  that this affidavit attests to? And where are those  
16                  three people to tell us where the error? Because that's  
17                  the premise. Because if you don't have a premises as to  
18                  an error, I mean these statutes are written specifically  
19                  for people to understand and the Election Boards to  
20                  understand what they need to do. And, therefore, if you  
21                  don't have a foundation, you don't have a basis, then  
22                  every single election could turn into this kind of a  
23                  discovery approach. So there has to be some foundation  
24                  with an error that you can point to to say yeah, there  
25                  could be a problem here. Somebody who voted in the, you

1 know, you have a machine here were 600 people voted and  
2 I have 199 people voting for the democrat and three  
3 voting for the republican, and I have two other machines  
4 where it's 50/50 and very close. That affidavit would  
5 indicate an error that we have to look at that machine.  
6 That's the type of error that we have to see some  
7 affidavit of. But this seems to be a general attack on  
8 the system. And the system may be at fault, but that's  
9 not the error that this statute is pointing to, it seems  
10 to me, when I read this section.

11 MR. LIEB: A couple of responses, Your Honor.

12 MR. CATANIA: Your Honor, may I be heard or --

13 THE COURT: First of all, let him respond  
14 while it's on his mind.

15 MR. CATANIA: Sure.

16 MR. LIEB: And then, of course, you can be  
17 heard Mr. Catania. Go ahead, Counsel.

18 MR. CATANIA: I think first, the example that  
19 Your Honor gave, I think is an excellent example of what  
20 it would look like for there to be a discrepancy in the  
21 returns that are sort of evident on the face of the  
22 returns, right? You have 600 votes, 200 registered  
23 voters. So I think that's sort of path one that's  
24 contemplated by Section 1404(e). Path two is what the  
25 voters who submitted affidavits did which is the other

1 path which is if it's not apparent on the race of the  
2 returns. I think their belief that there was an error  
3 is based on, you know, a sworn affidavit of leading  
4 computer scientists who has studied these machines  
5 extremely carefully, who has concluded that if someone  
6 wanted to engage in any kind of malfeasance, it would be  
7 extremely easy to do so.

8 THE COURT: And --

9 MR. LIEB: The -- well, I'm sorry.

10 THE COURT: Go ahead, go ahead.

11 MR. LIEB: The voters who signed these  
12 affidavits and came in petitioning for a recanvass, you  
13 know, didn't have -- some of them did have specific  
14 knowledge of specific things that went wrong in their  
15 polling places that were part of their basis for filing  
16 these affidavits. They didn't necessarily detail those  
17 in their affidavits, but I don't believe that the  
18 statute requires them to do that. There's no language  
19 in there that, you know, talks about specifying the  
20 details or providing any prima facie evidence or  
21 anything like that. So I think some people did have  
22 specific errors that they saw in their polling place,  
23 you know, a light here, an error there. I don't know  
24 what was in the minds of all the citizens who brought  
25 those petitions in. I do know that they provided sworn,

1       verified affidavits that they believed that an error had  
2       been committed and that belief was based in part on  
3       highly reputable experts serious legitimate concerns  
4       about the integrity of the machines.

5               THE COURT: Right.

6               MR. LIEB: I don't think the error was  
7       particularized in all cases, but I don't think the  
8       statute requires that the error be particularized in all  
9       cases.

10              THE COURT: All right. Mr. Catania, you  
11       wanted to say something?

12              MR. CATANIA: Your Honor, there are two  
13       appellants here, Jill Stein and Sharon Pennock. We  
14       don't believe that Jill Stein has standing and we ask  
15       that she be stricken. Under the section that the  
16       Petitioners or the Appellants are relying on, Jill Stein  
17       was not a resident of that precinct, so she should not  
18       be a proper party to this matter. Even assuming if Mr.  
19       Lieb's arguments are correct, once the Election Board  
20       acted on the 23rd, the remedy was to file something with  
21       the Court. Nothing was filed with the Court. We  
22       shouldn't be here today. It's a simple procedural  
23       issue. They didn't file correctly. An attorney didn't  
24       file it correctly. They filed in the Bureau of  
25       Elections that had no legal ability to address the

1 issues that they raised. They already acted.

2 THE COURT: Um-hum, um-hum. So you're saying  
3 based on this last discussion regardless, they had a  
4 foundation to file the affidavit forming --

5 MR. CATANIA: No, no --

6 THE COURT: -- a proper foundation?

7 MR. CATANIA: Evan assuming that he is  
8 correct, it doesn't matter. We shouldn't be here today  
9 because it was not properly brought before you in a  
10 timely fashion. They filed in the wrong place, assuming  
11 he is correct. I don't concede that issue.

12 THE COURT: And what should they have filed in  
13 the right place? What should they have filed? Where  
14 should they have filed it and when --

15 MR. CATANIA: They should --

16 THE COURT: -- and under what section?

17 MR. CATANIA: They could have filed under  
18 Section I think it's 3261(a) of the Election Code asking  
19 the Court of Common Pleas to order a recount. And at  
20 that point, they would have to prove and introduce  
21 evidence of their ability to demand a recount. That's  
22 the remedial purpose of that statute. Any time a Court  
23 is asked to overturn the action of what is the Executive  
24 Branch of the Delaware County Government, they certified  
25 the election --

1                   THE COURT: Right. And so then the foundation  
2                   of that discussion is assuming a proper certification,  
3                   where are we with this? And this is the basis for the  
4                   argument that counsel was making and that is -- and  
5                   that's where we were discussing where we were and then  
6                   how he circles back and gets back to the section that  
7                   he's -- the discussion, 25-3154(e). So you're saying  
8                   25-3154(e) wouldn't apply at that point?

9                   MR. CATANIA: It doesn't apply once the Board  
10                  acts. 35 -- 3154 is not relevant, once the Board votes  
11                  to certify the results.

12                 THE COURT: All right. And anything else,  
13                  because I'm ready to take this under advisement.

14                 MR. LIEB: I would just briefly say, Your  
15                  Honor, that the question number one, is under 3154(e)  
16                  has the completion of the computation of all of the  
17                  returns for the county been done in the manner that  
18                  complies with the statute. And the answer under 3154(f)  
19                  is no, not unless the unofficial returns were signed.  
20                  That means the 3154(e) period hasn't yet run, the  
21                  petitions were timely, and they should be heard.

22                 THE COURT: All right.

23                 MR. CATANIA: The unofficial returns were  
24                  signed which transform them legally into the official  
25                  returns. That's the conclusion.



1                   THE COURT: Do you agree that the unofficial  
2                   returns were signed?

3                   MR. LIEB: No, Your Honor. They're two  
4                   separate --

5                   THE COURT: How do we know the unofficial  
6                   returns were signed, Mr. Catania?

7                   MR. CATANIA: The returns can't be official  
8                   unless they're blessed by, accepted by, the Delaware  
9                   County Board of Elections. That makes them official.  
10                  The state returns is a process that occurs in  
11                  Harrisburg, but the Delaware County returns are made  
12                  official by the entity with the legal power to take that  
13                  action and that's the Delaware County Board of Elections  
14                  which they did at a duly advertised public meeting.

15                  MR. LIEB: Mr. Catania is conflating two steps  
16                  in a two step process. The first step is the  
17                  computation. The computation means you add up all the  
18                  district-by-district results, they get compiled and  
19                  announced in one centralized form and then the Board of  
20                  Elections signs them. Computation is done. At that  
21                  point, the Board of Elections is no longer sitting as  
22                  the return board counting up the results of the  
23                  election. Then, there is a five day waiting period.  
24                  That five day waiting period can only be triggered once  
25                  the computation is done. At the end of the five day

1       waiting period, it's permissible to then certify the  
2       results of the election which is the step that Mr.  
3       Catania is talking about. There are two steps. There  
4       are signatures of the Board of Elections required at  
5       both steps. It's the return board finishes its duties,  
6       it signs the computation. There's a waiting period  
7       where anybody who wants to challenge the -- wants to  
8       raise any issues can raise the issues and then there's  
9       the certification. The only evidence that's been adduced  
10      today and the reason that we had served a Notice to  
11      Appear and the Notice to Produce is of the  
12      certification. And, in fact, they admitted that the  
13      unofficial returns which were described in 3154(f) were  
14      never signed. So this is a two step process and based  
15      upon everything we've heard today, it appears that they  
16      jumped directly to Step 2. And in the absence of Step  
17      1, the petitions are timely.

18               THE COURT: Um-hum, all right. So --

19               MR. CATANIA: Even if that's true, the remedy  
20      was to appeal to Court and they didn't.

21               THE COURT: Um-hum. All right. I have it,  
22      thank you.

23               MR. LIEB: Thank you, Your Honor.

24               THE COURT: I'll take it under advisement.

25               MR. CATANIA: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 \* \* \*

3 [End of Proceeding]

4

C E R T I F I C A T E

I, Michael Freeman, hereby certify that the proceedings and evidence are contained fully and accurately on multi-track recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

Michael Freeman, Administrator  
Court Reporters

DIAZ TRANSCRIPTION SERVICES, hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

IN RE:  
RECOUNT AND/OR RECANVASS OF THE  
VOTE FOR PRESIDENT OF THE UNITED STATES  
AND FOR UNITED STATES SENATE IN THE  
NOVEMBER 8, 2016 GENERAL ELECTION

#2016-010508

BY:

Traci Calaman

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Traci L. Calaman  
Transcriber for  
Diaz Transcription Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

Judge